

AN ACT

RELATING TO THE EDUCATION TRUST ACT; PROVIDING THAT PROCEEDS OF A COLLEGE INVESTMENT AGREEMENT OR PREPAID TUITION CONTRACT MAY BE USED AT ADDITIONAL INSTITUTIONS OF HIGHER EDUCATION; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 21-21K-2 NMSA 1978 (being Laws 1997, Chapter 259, Section 2) is amended to read:

"21-21K-2. DEFINITIONS.--As used in the Education Trust Act:

A. "beneficiary" means a person who is entitled to receive benefits under a college investment agreement or a prepaid tuition contract;

B. "board" means the education trust board;

C. "commission" means the commission on higher education;

D. "college investment agreement" means an agreement entered into by the board and an investor, pursuant to the provisions of the Education Trust Act, to defray the costs of attendance of a beneficiary at an institution of higher education;

E. "council" means the state investment council;

F. "fund" means the education trust fund;

G. "institution of higher education" means a

state public post-secondary educational institution as defined in Section 6-17-1.1 NMSA 1978, a branch college, an independent community college, a technical and vocational institute or, if approved by the board, another public or private post-secondary educational institution located in this state or any other state;

H. "investor" means a person who has entered into a college investment agreement with the board;

I. "prepaid tuition contract" means a contract entered into by the board and a purchaser, pursuant to the provisions of the Education Trust Act, to provide for the payment of higher education tuition and required fees of a beneficiary; and

J. "purchaser" means a person who is obligated to make payments under a prepaid tuition contract."

Section 2. Section 21-21K-3 NMSA 1978 (being Laws 1997, Chapter 259, Section 3) is amended to read:

"21-21K-3. EDUCATION TRUST FUND--CREATION.--

A. The "education trust fund" is created in the state treasury. The board shall deposit all money received pursuant to college investment agreements and prepaid tuition contracts into the fund. Money in the fund shall consist of appropriations, investments, payments, gifts, bequests and donations. All money invested in the fund is appropriated to the board. Money in the fund shall not revert to the general

fund at the end of the fiscal year. The board shall account for each payment from an investor or purchaser on behalf of a beneficiary pursuant to a college investment agreement or prepaid tuition contract. The board shall provide that all money in the fund shall be invested either by the state investment officer according to rules promulgated by the council, subject to the approval of the board, or by a private investment advisor, approved by the council, pursuant to a contract between the board and the investment advisor. The board shall review investments made pursuant to this subsection at least quarterly.

B. Expenditures from the fund shall be for payments to institutions of higher education on behalf of beneficiaries or for refunds, in accordance with the provisions of the Education Trust Act, and for costs of administering that act.

C. In no event shall any liability of, or contractual obligation incurred by, the program established pursuant to the provisions of the Education Trust Act obligate or encumber any of the state's land grant permanent funds, the severance tax permanent fund or any money that is a part of a state-funded financial aid program. Nothing in the Education Trust Act creates any obligation, legal, moral or otherwise, to fulfill the terms of any college investment agreement or prepaid tuition contract out of any source other

than the education trust fund."

Section 3. Section 21-21K-5 NMSA 1978 (being Laws 1997, Chapter 259, Section 5) is amended to read:

"21-21K-5. COLLEGE INVESTMENT AGREEMENT.--

A. An investor may enter into a college investment agreement with the board under which the investor agrees to make investments into the fund from time to time for the purpose of defraying the costs of attendance billed by institutions of higher education. An investor may enter into a college investment agreement on behalf of any beneficiary under the age of nineteen. The board shall adopt a form of the college investment agreement to be used by the board and investors.

B. The beneficiary under a college investment agreement must be younger than nineteen years of age at the time the investor enters into the agreement and must be:

(1) a resident of this state at the time the investor enters into the agreement; or

(2) a nonresident who is the child of a parent who is a resident of this state at the time that parent enters into the agreement.

C. The board shall provide for the direct payment of principal, investment earnings and capital appreciation accrued pursuant to a college investment agreement to the institution of higher education that the beneficiary actually

attends.

D. The board may require a reasonable period of residence in this state, together with other related criteria, for a beneficiary or an investor.

E. A college investment agreement may be terminated by the investor at any time. The investor may modify the college investment agreement to designate a new beneficiary instead of the original beneficiary if the new beneficiary meets the requirements of the original beneficiary on the date the designation is changed and if the original beneficiary:

(1) dies;

(2) is not admitted to an institution of higher education following proper application;

(3) elects not to attend an institution of higher education or, if attending, elects to discontinue higher education; or

(4) for any other circumstance approved by the board, does not exercise his rights under the college investment agreement.

F. The board shall provide, by rule, procedures for determining the amount to be refunded for college investment agreements terminated pursuant to the provisions of this section. The balance of the accrued investment earnings and capital appreciation less the amount refunded

and administrative costs shall be credited to the fund.

G. The board shall establish a refund policy if a beneficiary receives additional student financial aid.

H. A college investment agreement terminates on the tenth anniversary of the date the beneficiary is projected to graduate from high school, not counting time spent by the beneficiary as an active-duty member of the United States armed services.

I. Gifts and bequests to the fund may be made in the name of a specific beneficiary or in the name of the fund in general. Gifts and bequests given for the benefit of a specific beneficiary shall be credited to that beneficiary, and gifts and bequests given to the fund in general shall be credited equally to each beneficiary of a college investment agreement.

J. Principal paid into the fund, together with accrued investment earnings and capital appreciation, shall be excluded from any calculation of a beneficiary's state student financial aid eligibility.

K. The board shall annually notify each investor of the status of the education trust fund."

Section 4. Section 21-21K-6 NMSA 1978 (being Laws 1997, Chapter 259, Section 6) is amended to read:

"21-21K-6. PREPAID HIGHER EDUCATION TUITION PROGRAM--
RULES.--

A. The board may promulgate rules in order to establish a prepaid higher education tuition program. Prior to the establishment of the program, the board will contract for a thorough feasibility study of the proposed prepaid higher education tuition program, including an actuarial analysis of the assumptions underlying the proposed program, and report to the appropriate interim committee of the legislature. The report shall include a recommendation from the board regarding whether it is feasible to proceed with the adoption of the proposed program based on the findings of the feasibility study.

B. The rules regarding the prepaid higher education tuition program shall specify at least the following:

(1) that prepaid tuition contracts, once paid, will cover all tuition and required fees of state public institutions of higher education;

(2) that payments for prepaid tuition contracts may be made either in a lump sum or in installments;

(3) that the prepaid tuition contracts shall include at least the following:

(a) provisions that allow purchasers to choose from payment plans that pay the tuition and required fees for institutions of higher education;

(b) provisions that allow for rollover of prepaid higher education tuition benefits from one plan to another and that provide that benefits may be used at any institution of higher education;

(c) penalties for termination of the contract or default on any of the contract's terms or conditions; and

(d) provisions that allow purchasers to change or switch beneficiaries;

(4) that beneficiaries must meet certain minimum eligibility requirements as determined by the board;

(5) that the board shall consider at least the following variables when setting contract prices:

(a) the amount and estimated rate of increase of tuition and fees at institutions of higher education;

(b) estimated investment returns;

(c) estimated administrative costs;

and

(d) the period between the date the contract is entered into and the date the beneficiary is projected to graduate from high school;

(6) that gifts or bequests may be made to the fund, either on behalf of a beneficiary or to the fund generally;

(7) how and when institutions of higher education become eligible to participate in the program;

(8) that benefits under a prepaid tuition contract are excluded from any calculation of a beneficiary's state student financial aid eligibility; and

(9) that the board shall annually provide for audited statements and actuarial studies on the condition of the fund."

Section 5. Section 21-21K-7 NMSA 1978 (being Laws 1997, Chapter 259, Section 7) is amended to read:

"21-21K-7. REPORTS.--

A. The board shall annually submit to the governor and to the appropriate interim legislative committee a report including:

(1) the board's fiscal transactions during the preceding fiscal year;

(2) the market and book value of the fund as of the end of the preceding fiscal year;

(3) the asset allocations of the fund expressed in percentages of stocks, fixed income securities, cash or other financial assets;

(4) the rate of return on the investment of the fund's assets during the preceding fiscal year;

(5) an actuarial valuation of the assets and liabilities of the program, including the extent to which the

program's liabilities are unfunded; and

(6) complete prepaid tuition contract sales information, including projected enrollments of beneficiaries at institutions of higher education.

B. The board shall make the report described by Subsection A available to purchasers of prepaid tuition contracts and investments under college investment agreements." _____